

**FILED**

JAN 05 2011

Clerk, U. S. District Court  
Eastern District of Tennessee  
At Knoxville

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE**

**STEPHEN BOWERY,**

**Plaintiff,**

**v.**

**BERKSHIRE LIFE INSURANCE  
COMPANY OF AMERICA,**

**Defendant.**

Case No. 3:11-CV-3  
Jordan/Shirley

**NOTICE OF REMOVAL**

**PLEASE TAKE NOTICE** that pursuant to 28 U.S.C. §§ 1332 and 1446, Defendant Berkshire Life Insurance Company of America ("Berkshire") hereby gives Notice of Removal of the above-captioned action, Case No. 3-616-10 pending in the Circuit Court for Knox County, Tennessee, to the United States District Court for the Eastern District of Tennessee, Northern Division. In support of removal, Defendant states as follows:

1. This Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b) in that it is being filed within thirty (30) days of December 27, 2010, the date Berkshire received a copy of the initial pleading setting forth the claim for relief upon which the action is based.

2. Pursuant to 28 U.S.C. § 1441(a), the removal of this action to this Court is proper as this Court sits in the judicial district and division embracing the place where the action is pending. See 28 U.S.C. § 123 (stating that the Eastern District of Tennessee, Northern Division, embraces Knox County).

3. Pursuant to 28 U.S.C. § 1446(a), copies of all process and pleadings that have been served upon Berkshire are attached hereto as Exhibit 1. A complete copy of the Complaint, including all exhibits thereto, which was obtained from the State Court, is attached as Exhibit 2.

4. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being filed with the Circuit Court for Knox County, Tennessee.

5. By filing this Notice of Removal, the Removing Defendant does not waive any available defenses.

### **JURISDICTION**

6. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332.

7. The proper parties to this action are completely diverse, given that:

- a. Upon information and belief, Plaintiff is a citizen of Tennessee (see Complaint at p. 1 ¶ 1); and
- b. Defendant Berkshire is not a citizen of Tennessee, but is a Massachusetts corporation with its principal place of business in Massachusetts (see id. at p. 1 ¶ 2).

8. Plaintiff seeks damages for past due benefits in the amount of \$274,607.00, “policy contract benefits” including the past due benefits totaling \$4,312,685.00, punitive damages of \$12,938,055.00, prejudgment interest, court costs, attorneys fees, and “incidental expenses.” (See id. at p. 3 ¶ 6 and p. 5.) Therefore, based upon the allegations of the Complaint, the amount in controversy, exclusive of interests and costs, exceeds \$75,000.00.

9. Accordingly, this Court has diversity jurisdiction over this action, and this case is removable on that basis.

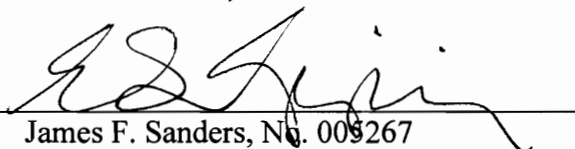
### **CONCLUSION**

10. For the foregoing reasons, this Court has jurisdiction over this action and this action is properly removed to the Eastern District of Tennessee, Northern Division, pursuant to 28 U.S.C. §§ 1332 and 1446.

This 4<sup>th</sup> day of January, 2011.

Respectfully submitted,

**NEAL & HARWELL, PLC**

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*Counsel for Defendant*

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served by First-Class Mail, postage prepaid, on this the 4<sup>th</sup> day of January, 2011 on the following:

Jason R. McLellan, Esq.  
158 Cherokee Street  
Kingsport, TN 37660

